

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ULTRATEC, INC. and CAPTEL, INC.,

Plaintiffs,

v.

ORDER

SORENSEN COMMUNICATIONS, INC. and
CAPTIONCALL, INC.,

14-cv-66-jdp

Defendants.

CaptionCall (which the court will use as shorthand for the two defendants) moves for relief from the stipulated protective order (Dkt. 23-1). Dkt. 681 and Dkt. 684. CaptionCall wants to use confidential commercial information from Ultratec (shorthand for plaintiffs) in an *inter partes* review of Ultratec's '415 patent, to rebut Ultratec's contention that secondary considerations support the validity of the patent. Ultratec opposes, contending that confidential information presented to PTAB will necessarily be disclosed to the public if PTAB bases its decision on that information. Dkt. 691 and Dkt. 694. CaptionCall seeks a reply, Dkt. 698, which the court will accept and consider.

The court is satisfied that Ultratec has a legitimate interest in maintaining the confidentiality of its commercial information. But the court is not persuaded that PTAB would necessarily disclose legitimately confidential information, even if PTAB based its decision on that information. As the examples presented in CaptionCall's reply show, PTAB handles confidential information just as courts in the Seventh Circuit do. Any confidential information will be presented to PTAB under seal, but ultimately, if that information is a basis for PTAB's decision, Ultratec will have to convince PTAB that its confidential information warrants protection from public disclosure, just as it would have to do in this

court. Of course, the fate of its confidential information is largely in Ultratec's hands, as it can render this information irrelevant by abandoning or modifying its secondary considerations arguments.

But it would be grossly unfair to CaptionCall to allow Ultratec to defend the non-obviousness of the '415 patent on the basis of commercial success, while Ultratec uses the protective order in this case to prevent CaptionCall from rebutting that evidence. The court will grant CaptionCall relief from the protective order on the same terms that it previously granted relief to Ultratec.

CaptionCall may file the documents identified in Dkt. 681 and Dkt. 684 with PTAB, but they must do so in a manner that, with the exception of the disclosure to PTAB itself, presents the documents' confidentiality consistent with the terms of this court's protective order.

ORDER

IT IS ORDERED that:

1. Defendants' motions for relief from the stipulated protective order, Dkt. 681 and Dkt. 684, are GRANTED as set forth above.
2. Defendants' motion for leave to file reply, Dkt. 698, is GRANTED.

Entered September 6, 2016.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge